

Introduced by Senator McPherson
(Principal coauthor: Assembly Member Matthews)

February 21, 2003

An act to amend Section 1214 of the Penal Code, and to amend Section 781 of the Welfare and Institutions Code, relating to restitution.

LEGISLATIVE COUNSEL'S DIGEST

SB 631, as introduced, McPherson. Restitution.

Existing law requires a court to order a defendant convicted of a misdemeanor or felony to pay a restitution fine which is then deposited into the Restitution Fund for expenditure by the Victim Compensation and Government Claims Board as awards to victims of crime, as specified. For cases in which a sentence is imposed that includes a period of parole, existing law provides that an additional restitution fine shall be ordered, in the same amount as the primary restitution fine, to be suspended unless the person's parole is revoked. Existing law provides that a fine or restitution fine may be enforced in the manner of civil judgments generally, specifies that the Victims Compensation and Government Claims Board may collect restitution fine balances after the termination of a term of probation or parole, authorizes disclosure of specified information to the board to assist the board in collecting restitution fines, and exempts restitution fines from the statutes limiting the time permitted for enforcing judgments.

Existing law establishes diversion programs in categories of cases involving drug and other charges that, upon successful completion, lead to the dismissal of criminal charges. For most of these categories, the court is required to impose a diversion restitution fee on the defendant, as specified.

This bill would specify that a diversion restitution fee or a restitution fine imposed upon parole revocation may also be enforced in the manner of civil judgments generally. It provides that parole revocation restitution fines and diversion restitution fees are also subject to collection by the board after the termination of parole or completion of diversion, and that the same disclosures authorized to assist the board in collecting restitution fines may be given to the board to assist in collecting these parole revocation restitution fines and diversion restitution fees. This bill would also exempt diversion restitution fees from the time limitations on enforcing judgments.

Under existing law, the former State Board of Control has been renamed the Victim Compensation and Government Claims Board.

This bill would correct obsolete references to the State Board of Control.

Existing law provides that, in response to a petition with specified contents, and after making certain findings, a court shall seal records relating to allegations of unlawful conduct by a juvenile, with specified exceptions.

This bill would require a petition to seal juvenile records to include a statement disclosing any outstanding restitution obligation relating to the unlawful act that caused the records to be created. This bill would require a court, before granting a petition to seal juvenile records under this authority, to find that the statement indicates that there is no outstanding restitution obligation directly relating to, or arising from, the unlawful act that caused the records to be created. The bill would also state that a closed civil case or satisfied restitution obligation relating to, or arising from, an unlawful act does not bar the court from sealing the records of a case.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1214 of the Penal Code is amended to
2 read:

3 1214. (a) If the judgment is for a fine, including a restitution
4 fine ordered pursuant to Section 1202.4 *or* 1202.45, or Section
5 1203.04 as operative on or before August 2, 1995, or Section
6 13967 of the Government Code, as operative on or before
7 September 28, 1994, with or without imprisonment, *or a diversion*



1 *restitution fee ordered pursuant to Section 1001.90*, the judgment
2 may be enforced in the manner provided for the enforcement of
3 money judgments generally. Any portion of a restitution fine *or*
4 *restitution fee* that remains unsatisfied after a defendant is no
5 longer on probation or parole *or has completed diversion* is
6 enforceable by the ~~State Board of Control~~ *Victim Compensation*
7 *and Government Claims Board* pursuant to this section.
8 Notwithstanding any other provision of law prohibiting
9 disclosure, the state, as defined in Section 900.6 of the
10 Government Code, a local public entity, as defined in Section
11 900.4 of the Government Code, or any other entity, may provide
12 the ~~State Board of Control~~ *Victim Compensation and Government*
13 *Claims Board* any and all information to assist in the collection of
14 unpaid portions of a restitution fine for terminated probation or
15 parole cases, *or of a restitution fee for completed diversion cases*.
16 For purposes of the preceding sentence, “state, as defined in
17 Section 900.6 of the Government Code,” and “any other entity”
18 shall not include the Franchise Tax Board.

19 (b) In any case in which a defendant is ordered to pay
20 restitution, the order to pay restitution (1) is deemed a money
21 judgment if the defendant was informed of his or her right to have
22 a judicial determination of the amount and was provided with a
23 hearing, waived a hearing, or stipulated to the amount of the
24 restitution ordered, and (2) shall be fully enforceable by a victim
25 as if the restitution order were a civil judgment, and enforceable
26 in the same manner as is provided for the enforcement of any other
27 money judgment. Upon the victim’s request, the court shall
28 provide the victim in whose favor the order of restitution is entered
29 with a certified copy of that order and a copy of the defendant’s
30 disclosure pursuant to paragraph (4) of subdivision (f) of Section
31 1202.4, affidavit or information pursuant to paragraph (5) of
32 subdivision (f) of Section 1202.4, or report pursuant to paragraph
33 (7) of subdivision (f) of Section 1202.4. The court also shall
34 provide this information to the district attorney upon request in
35 connection with an investigation or prosecution involving perjury
36 or the veracity of the information contained within the defendant’s
37 financial disclosure. In addition, upon request, the court shall
38 provide the ~~State Board of Control~~ *Victim Compensation and*
39 *Government Claims Board* with a certified copy of any order
40 imposing a restitution fine or order and a copy of the defendant’s

1 disclosure pursuant to paragraph (4) of subdivision (f) of Section
2 1202.4, affidavit or information pursuant to paragraph (5) of
3 subdivision (f) of Section 1202.4, or report pursuant to paragraph
4 (7) of subdivision (f) of Section 1202.4. A victim shall have access
5 to all resources available under the law to enforce the restitution
6 order, including, but not limited to, access to the defendant's
7 financial records, use of wage garnishment and lien procedures,
8 information regarding the defendant's assets, and the ability to
9 apply for restitution from any fund established for the purpose of
10 compensating victims in civil cases. Any portion of a restitution
11 order that remains unsatisfied after a defendant is no longer on
12 probation or parole is enforceable by the victim pursuant to this
13 section. Victims and the ~~State Board of Control~~ *Victim*
14 *Compensation and Government Claims Board* shall inform the
15 court whenever an order to pay restitution is satisfied.

16 (c) Except as provided in subdivision (d), and notwithstanding
17 the amount in controversy limitation of Section 85 of the Code of
18 Civil Procedure, a restitution order or restitution fine that was
19 imposed pursuant to Section 1202.4 in any of the following cases
20 may be enforced in the same manner as a money judgment in a
21 limited civil case:

22 (1) In a misdemeanor case.

23 (2) In a case involving violation of a city or town ordinance.

24 (3) In a noncapital criminal case where the court has received
25 a plea of guilty or nolo contendere.

26 (d) Chapter 3 (commencing with Section 683.010) of Division
27 1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply
28 to a judgment for any fine or restitution ordered pursuant to
29 Section 1202.4 or Section 1203.04 as operative on or before
30 August 2, 1995, or Section 13967 of the Government Code, as
31 operative on or before September 28, 1994, *or to a diversion*
32 *restitution fee ordered pursuant to Section 1001.90.*

33 (e) (1) This section shall become operative on January 1, 2000,
34 and shall be applicable to all courts, except when all of the
35 following apply:

36 (A) A majority of judges of a court apply to the Judicial Council
37 for an extension.

38 (B) The judicial application described in paragraph (1)
39 documents the need for time to adjust restitution procedures and
40 practices, as well as to facilitate judicial education and training in

1 direct restitution to victims under subdivision (f) of Section
2 1202.4.

3 (C) The Judicial Council grants the extension upon finding
4 good cause.

5 (2) Upon the grant of an extension pursuant to the application
6 of a court under this subdivision, the provisions of former Section
7 1202.4 shall continue to apply with respect to that court. The
8 extension may be for any period of time set by the Judicial Council,
9 but shall not exceed January 1, 2002, in any case.

10 SEC. 2. Section 781 of the Welfare and Institutions Code is
11 amended to read:

12 781. (a) In any case in which a petition has been filed with a
13 juvenile court to commence proceedings to adjudge a person a
14 ward of the court, in any case in which a person is cited to appear
15 before a probation officer or is taken before a probation officer
16 pursuant to Section 626, or in any case in which a minor is taken
17 before any officer of a law enforcement agency, the person or the
18 county probation officer may, five years or more after the
19 jurisdiction of the juvenile court has terminated as to the person,
20 or, in a case in which no petition is filed, five years or more after
21 the person was cited to appear before a probation officer or was
22 taken before a probation officer pursuant to Section 626 or was
23 taken before any officer of a law enforcement agency, or, in any
24 case, at any time after the person has reached the age of 18 years,
25 petition the court for sealing of the records, including records of
26 arrest, relating to the person's case, in the custody of the juvenile
27 court and probation officer and any other agencies, including law
28 enforcement agencies, and public officials as the petitioner
29 alleges, in his or her petition, to have custody of the records. *The*
30 *petition to seal the records shall include a statement disclosing any*
31 *outstanding restitution obligation relating to the unlawful act that*
32 *caused the records to be created.* The court shall notify the district
33 attorney of the county and the county probation officer, if he or she
34 is not the petitioner, and the district attorney or probation officer
35 or any of their deputies or any other person having relevant
36 evidence may testify at the hearing on the petition. If, after hearing,
37 the court finds that since the termination of jurisdiction or action
38 pursuant to Section 626, as the case may be, he or she has not been
39 convicted of a felony or of any misdemeanor involving moral
40 turpitude and that rehabilitation has been attained to the

1 satisfaction of the court, *and that the petition indicates that there*
2 *is no outstanding restitution obligation directly relating to, or*
3 *arising from, the unlawful act that caused the records to be created,*
4 it shall order all records, papers, and exhibits in the person's case
5 in the custody of the juvenile court sealed, including the juvenile
6 court record, minute book entries, and entries on dockets, and any
7 other records relating to the case in the custody of the other
8 agencies and officials as are named in the order. In any case in
9 which a ward of the juvenile court is subject to the registration
10 requirements set forth in Section 290 of the Penal Code, a court,
11 in ordering the sealing of the juvenile records of the person, also
12 shall provide in the order that the person is relieved from the
13 registration requirement and for the destruction of all registration
14 information in the custody of the Department of Justice and other
15 agencies and officials. Notwithstanding any other provision of
16 law, the court shall not order the person's records sealed in any case
17 in which the person has been found by the juvenile court to have
18 committed an offense listed in subdivision (b) of Section 707 when
19 he or she had attained 14 years of age or older. *A closed civil case*
20 *relating to or arising from an unlawful act, or a satisfied restitution*
21 *obligation relating to or arising from an unlawful act does not bar*
22 *the court from sealing the records of a case.* Once the court has
23 ordered the person's records sealed, the proceedings in the case
24 shall be deemed never to have occurred, and the person may
25 properly reply accordingly to any inquiry about the events, the
26 records of which are ordered sealed. The court shall send a copy
27 of the order to each agency and official named therein, directing
28 the agency to seal its records and stating the date thereafter to
29 destroy the sealed records. Each such agency and official shall seal
30 the records in its custody as directed by the order, shall advise the
31 court of its compliance, and thereupon shall seal the copy of the
32 court's order for sealing of records that it, he, or she received. The
33 person who is the subject of records sealed pursuant to this section
34 may petition the superior court to permit inspection of the records
35 by persons named in the petition, and the superior court may so
36 order. Otherwise, except as provided in subdivision (b), the
37 records shall not be open to inspection.

38 (b) In any action or proceeding based upon defamation, a court,
39 upon a showing of good cause, may order any records sealed under
40 this section to be opened and admitted into evidence. The records

1 shall be confidential and shall be available for inspection only by
2 the court, jury, parties, counsel for the parties, and any other person
3 who is authorized by the court to inspect them. Upon the judgment
4 in the action or proceeding becoming final, the court shall order the
5 records sealed.

6 (c) (1) Subdivision (a) does not apply to Department of Motor
7 Vehicle records of any convictions for offenses under the Vehicle
8 Code or any local ordinance relating to the operation, stopping and
9 standing, or parking of a vehicle where the record of any such
10 conviction would be a public record under Section 1808 of the
11 Vehicle Code. However, if a court orders a case record containing
12 any such conviction to be sealed under this section, and if the
13 Department of Motor Vehicles maintains a public record of such
14 a conviction, the court shall notify the Department of Motor
15 Vehicles of the sealing and the department shall advise the court
16 of its receipt of the notice.

17 Notwithstanding any other provision of law, subsequent to the
18 notification, the Department of Motor Vehicles shall allow access
19 to its record of convictions only to the subject of the record and to
20 insurers which have been granted requestor code numbers by the
21 department. Any insurer to which such a record of conviction is
22 disclosed, when such a conviction record has otherwise been
23 sealed under this section, shall be given notice of the sealing when
24 the record is disclosed to the insurer. The insurer may use the
25 information contained in the record for purposes of determining
26 eligibility for insurance and insurance rates for the subject of the
27 record, and the information shall not be used for any other purpose
28 nor shall it be disclosed by an insurer to any person or party not
29 having access to the record.

30 (2) This subdivision shall not be construed as preventing the
31 sealing of any record which is maintained by any agency or party
32 other than the Department of Motor Vehicles.

33 (3) This subdivision shall not be construed as affecting the
34 procedures or authority of the Department of Motor Vehicles for
35 purging department records.

36 (d) Unless for good cause the court determines that the juvenile
37 court record shall be retained, the court shall order the destruction
38 of a person's juvenile court records that are sealed pursuant to this
39 section as follows: five years after the record was ordered sealed,
40 if the person who is the subject of the record was alleged or



1 adjudged to be a person described by Section 601; or when the
2 person who is the subject of the record reaches the age of 38 if the
3 person was alleged or adjudged to be a person described by Section
4 602, except that if the subject of the record was found to be a person
5 described in Section 602 because of the commission of an offense
6 listed in subdivision (b), of Section 707, when he or she was 14
7 years of age or older, the record shall not be destroyed. Any other
8 agency in possession of sealed records may destroy its records five
9 years after the record was ordered sealed.

10 (e) This section shall not permit the sealing of a person's
11 juvenile court records for an offense where the person is convicted
12 of that offense in a criminal court pursuant to the provisions of
13 Section 707.1. This subdivision is declaratory of existing law.

